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HSBC MORTGAGE CORPORATION (USA) AND
HSBC BANK USA, N.A.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Philip Wong, Frederic Chaussy, and Leslie
Marie Shearn, individually, on behalf of all
others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

HSBC Mortgage Corporation (USA);
HSBC Bank USA, N.A.; and DOES 1
through 50, inclusive,

Defendants.

Case No. C 07 2446 MMC [ECF]

**DECLARATION OF DAVID GATES IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION
FOR CONDITIONAL CERTIFICATION,
PRODUCTION OF UPDATED CLASS
LIST, AND PARTIAL SUMMARY
JUDGMENT**

Date: February 8, 2008
Time: 9:00 a.m.
Courtroom: 7 (19th Floor)
Judge: Hon. Maxine M. Chesney

Complaint Filed: June 29, 2007 (Amended)
Trial Date: Not Yet Set

1 I, David Gates, hereby declare and state:

2 1. I have personal knowledge of the facts set forth below. If called as a witness,
3 I could and would testify to the following.

4 2. I am employed by HSBC Mortgage Corporation (USA) (hereinafter
5 "HMCU") as "Senior Vice President—National Sales and Marketing." My employer's name—
6 "HSBC Mortgage Corporation (USA)"—appears on my work-related documents, including my
7 business cards.

8 3. In 1997, I worked for a company called Marine Midland Bank, which was
9 owned by an HSBC company. In or about 2000, Marine Midland Bank rebranded and became
10 known as HSBC Mortgage Corporation (USA).

11 4. Since May 7, 2004, HMCU has employed approximately four hundred
12 seventy-five (475) people in the Senior Retail Mortgage Lending Consultant, Retail Mortgage
13 Lending Consultant or Premier Mortgage Sales Officer positions.

14 5. HMCU currently employs approximately two hundred sixty (260) people in
15 the Senior Retail Mortgage Lending Consultant, Retail Mortgage Lending Consultant or Premier
16 Mortgage Sales Officer positions (generally called "loan officers"). These "loan officers" work in
17 California, Connecticut, Delaware, Florida, New Jersey, New York, Pennsylvania, and the District
18 of Columbia.

19 6. Of the approximate, current 260 "loan officers," approximately only ten (10)
20 are employed in California. In fact, since 2004, HMCU has employed only an approximate total of
21 thirty-three (33) "loan officers" in California.

22 7. Historically, neither HBUS nor HMCU has had a very big or strong presence
23 in California. It was only in 2005 that HBUS and HMCU began to work on increasing their
24 presence and recognition in California. By comparison, HBUS and HMCU have had very strong
25 and visible presences in New York for at least ten (10) years. Given the fact that HBUS and HMCU
26 are more well known in the Eastern states, it would be fair and accurate to say that "loan officers"
27 working in California have had very different experiences in working for HMCU and developing
28 their business and prospective client base. Thus, the experiences of "loan officers" in California

1 cannot be seen as typical or similar to loan officers working in other states. I base this statement
2 upon the fact that I talk to divisional and regional managers who head up the divisions or regions of
3 HMCU across the country who have told me what their business market is like. I also base this
4 statement upon the fact that I have talked to "loan officers" across the country about their business
5 market and experiences.

6 8. The way in which "loan officers" perform their job duties is not the same. For
7 example, when using the LoanQuest software provided by HMCU, some "loan officers" use the
8 software in the client's presence to fill out required paperwork. Others choose to write down
9 information received from the client and then complete the required paperwork on LoanQuest later.
10 The result is that some "loan officers" may spend more time doing more administrative duties than
11 others.

12 9. Any office space maintained or used by HMCU is considered to be only a
13 "touchdown" space for "loan officers" to briefly stop by if they need to meet a client, attend a
14 meeting, make a few calls or do some paperwork. HMCU does not intend, nor does it permit, that
15 "loan officers" to spend all of their work days in this office space.

16 10. HBUS provides only general oversight of HMCU's financial management.

17 I declare under penalty of perjury under the laws of the States of California and New
18 York and the United States of America that the foregoing declaration is true and correct to the best
19 of my personal knowledge.

20 Executed this 18th day of January, 2008, in Depew, New York.

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22 
23 DAVID GATES

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26 Firmwide:84052982.1 023404.1043

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DECLARATION OF DAVID GATES

2.

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